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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JEROME G. BEERY,

Petitioner,

-against-

DAN E. TURNER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

JEROME G. BEERY, PRO SE
565 Navajo
Los Alamos, New Mexico
87544
505-667-5355

Questions Presented

1. Whether a bankruptcy trustee, who is a brother to an attorney for creditors, and who is listed as a member of his brother's law firm, has interests adverse to the bankruptcy estate.

2. Whether the district court erred in failing to dismiss for lack of jurisdiction when the petitioner had withdrawn his Chapter XI petition.

3. Whether the petitioner has been afforded his rights to due process.

4. Whether the court erred in failing to grant funds for the legal expenses of the petitioner.

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TABLE OF AUTHORITIES

U.S. Constitution, Sixth Amendment

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, affirming two judgments of the district court and failing to grant injunctive relief.

JURISDICTION

The opinion of the United States Court of Appeals was entered on May 14, 1982 and the petition for rehearing was denied on July 1, 1982. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254.

STATEMENT OF THE CASE

The statement of the case is outlined in the appendix, pages a-2 through a-5.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because petitioner's constitutional rights to due process have been violated, his right to counsel has not been granted, and the bankruptcy statutes are in conflict with his constitutional rights. In addition the certiorari should be granted because the court of appeals has ruled incorrectly as to what constitutes adverse interest to a bankruptcy estate.

1. BANKRUPTCY TRUSTEE HAS INTERESTS ADVERSE TO THE BANKRUPTCY ESTATE.

Dan E. Turner filed an affidavit as proposed attorney for the receiver on January 27, 1976 that stated:

"That I represent no interest adverse to said receiver or the debtor estate, in the matters upon which I am to be engaged."

However the record tells a different story. At the January 19, 1976 hearing to consider appointment of a receiver, Dan Turner advised the court that he had talked

with his brother Lee Turner briefly about the case and did advise him on some of the procedures he would be confronted with. The attorney for the petitioner objected to Dan Turner's appointment as receiver on the grounds that Dan had "held himself out to be in practice with his brother."

The Martindale-Hubbell law directories from 1975 through 1979 show Dan E. Turner to be a member of the firm of H.L. Turner. The Topeka, Kansas telephone directories from 1975 through 1978 show Dan E. Turner and his brother's law firm sharing the same address and in 1979 it shows that they both moved to a new address. These close ties constitute an interest adverse to the bankruptcy estate. In addition, the record shows that the petitioner would likely never have come to the bankruptcy court had it not been for a state receivership action brought on behalf of certain creditors by Lee Turner.

Prior to the Bankruptcy Act of 1898 the type of collusion that exists here between the Turner brothers was commonly referred to as a "bankruptcy ring". One attorney would bring some sort of action against an individual and his assets would be seized. Then the attorneys for both sides would milk the assets dry while both the debtor and the creditors would be left out in the cold. In this present case the petitioner's assets were seized, his farming assets were auctioned off, along with some normally exempt personal property, and his creditors have yet to see any of their money. At this time (September 1982), more than six years later, the only money that has been paid out of the estate has gove to accountants and attorneys. It seems that bankruptcy rings are still alive and well in 20th Century America. If these procedures are allowed under the bankruptcy statutes then the statutes should be

reviewed by the United States Supreme Court.

2. THE DISTRICT COURT ERRED IN FAILING TO DISMISS FOR LACK OF JURISDICTION WHEN THE PETITIONER HAD WITHDRAWN HIS CHAPTER XI PETITION IN BANKRUPTCY.

A petition for relief under Chapter XI of the Bankruptcy Act can only be a voluntary one. Such a petition strikes a bargain between the debtor and the court. The debtor agrees to disclose fully all of his assets and is required to be cooperative and candid with the court and the receiver, if one is appointed. In return the court provides a shield against actions by the alleged creditors. In this case the state receivership action was brought by H. Lee Turner, on behalf of a group of alleged creditors. The record shows that the action occurred on January 5, 1976, and a record of the grain contracts shows that the grain contracts were not due until January 5, 1976.

The record is clear that the petitioner

refused to cooperate with Dan Turner after he was appointed receiver in the bankruptcy case. He requested that his attorneys withdraw his Chapter XI petition and when they refused he fired them and while under oath before the bankruptcy judge he withdrew the petition. From that instant the bankruptcy court has had no jurisdiction over the petitioner. If the Appeals Court is correct in their interpretation of the bankruptcy rules regarding withdrawal of the petition then the United States Supreme Court should re-examine those bankruptcy rules in light of the constitutional rights of the petitioner.

3. THE PETITIONER HAS NOT BEEN AFFORDED HIS CONSTITUTIONAL RIGHTS TO PROCEDURAL DUE PROCESS.

We will simply list a number of instances in which the petitioner has been denied due process.

The trial on the farmer issue was held before a district judge while the statute

provides that is should have been held before the bankruptcy judge. The district court cannot arbitrarily kick a proceeding up one level since this reduces by one the review process. Prior to the Bankruptcy Act of 1978, all of the actions of the bankruptcy court were subject to review by the district court.

Judge Rogers' certificate of retention of debtor in possession which accompanied the Chapter XI petition was dissolved by Judge Morton on January 19, 1976. A bankruptcy judge in 1976 did not have the authority to dissolve an order entered by a district judge. Further, Judge Morton took that action and appointed a receiver at a hearing called on one-day notice, at which the petitioner could not appear since he had no personal notice. No substantive evidence was given and the petition for the appointment of a receiver was not accompanied by an affidavit from creditors.

The attorney who signed the motion for appointment of a receiver on behalf of certain creditors, C. Bruce Works, later filed an affidavit with the court stating that he did not represent those creditors.

The petitioner has filed many motions which have never been heard or ruled upon by the court. These include a number of motions for restraining orders filed on March 17, 1976, a motion on April 15, 1976 for withdrawal of the Chapter XI petition, and a motion for vacation of adjudication made on June 15, 1977.

On January 11, 1978, the petitioner moved to have the trustee removed for cause. Although the trustee objected to the motion on the grounds that the petitioner was not a party to the bankruptcy, there was no objection to the motion on substantive grounds by the trustee. In addition, there was no objection by any of the creditors. On April 19, 1978, the bankruptcy court

entered an order denying the petitioner's motion. It is a curious order, in that the court has argued the case for the trustee when neither the trustee or any of the creditors offered any arguments in opposition to the motion.

A bankruptcy auction was held on May 21, 1976 by order of the court dated May 4, 1976. Many of the petitioner's personal items, normally exempt, were sold at the auction. The order defining the exempt property was not entered by the court until after the sale (August 2, 1976). It is a matter of record that toys, clothes, furniture, books, and personal records were sold at the auction. It is also a matter of record that these items were not listed in the order authorizing the auction. One buyer at the auction purchased a box of books and later returned to the petitioner his high school yearbook and his college diploma which were in the books purchased.

Further, many of the items sold were jointly owned by the petitioner and his wife. She is not a party to the bankruptcy. There were also numerous items owned by third parties which happened to be located at the farm site which were also sold. Prior to the sale the trustee had asked the court for a restraining order preventing the petitioner from entering upon the premises and removing his personal property.

4. THE PETITIONER HAS BEEN DENIED FUNDS FOR LEGAL EXPENSES

The petitioner moved on September 2, 1977 to be granted funds from the estate to pay his legal expenses associated with the bankruptcy proceedings. That motion was not considered until the beginning of the trial on the farmer issue. At that time the motion was overruled and denied. The court erred in not providing legal expenses. The court ordered the trial, ordered the petitioner to appear, and designated the trustee as plaintiff. The trustee was

paid from the estate for all of his efforts. The accountants who assisted the trustee at the trial were paid $25,000 from the estate. All of the petitioner's funds were still held by the court and yet he was denied funds to hire expert counsel and pay his own expenses. This hardly represents the impartial system of justice in which this country takes such pride. If the bankruptcy statutes allow such a situation then those statutes should be reviewed to determine whether the petitioner's constitutional rights to due process should not prevail. Due process is simply fair play. The petitioner has not been accorded due process in these bankruptcy proceedings.

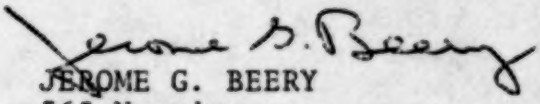
CONCLUSION

Since there are questions regarding constitutional rights of the petitioner involved and possible conflict of those rights with the bankruptcy statutes this

petition for a writ of certiorari should be granted.

Dated: Los Alamos, New Mexico
September 21, 1982

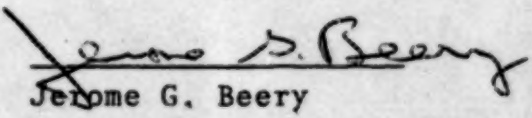
Respectfully Submitted,



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CERTIFICATE OF MAILING

I certify that I mailed three copies of this petition by first class mail to Dan E. Turner, 801 S.W. Western, Topeka, Kansas, 66606, on September 21, 1982.



Jerome G. Beery